



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Kenneth T. Cuccinelli II**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

**MEMORANDUM**

**TO:** BRIAN MCCORMICK  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM:** JENNIFER L. GOBBLE  
Special Counsel to DMAS

**DATE:** April 12, 2011

**SUBJECT: Fast Track Regulation to Amend the Process for Verification of Citizenship and Identity**

I am in receipt of the attached fast-track regulation<sup>1</sup> relating to verification of citizenship and identity for Medicaid. The regulation adopts an option offered to states under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) providing an alternative process for verification of the citizenship and identity of Medicaid applicants and recipients. You asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the regulation and if the regulation comports with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

This regulation will permit the Commonwealth to enter into a data match program with the Social Security Administration to verify the citizenship and identity of Medicaid applicants and recipients. The data match program established by this regulation is intended to provide for a more seamless application process and is expected to reduce the workload for most local Department of Social Service eligibility workers, as they no longer will be required to request original documentation and provide the follow-up needed to obtain the necessary information. Pursuant to this regulation, if a Medicaid applicant cannot provide satisfactory documentary evidence of

---

<sup>1</sup> Fast-Track regulation text as posted to the Town Hall on March 22, 2011.

citizenship and identity, and if the Commissioner of Social Security has not been able to verify this information, the applicant has 90 days to provide written verification resolving the discrepancy. If satisfactory documentation is not provided, the individual's Medicaid coverage is terminated 30 days following the 90-day period.

Please be advised that this regulation provides Medicaid benefits for up to 120 days to individuals who have not provided satisfactory documentation of citizenship and identity. This is of course a policy determination and not part of the legal analysis related to the authority of the Director to promulgate the regulation.

Pursuant to Va. Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in Article 2 of the Administrative Process Act with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-4905.

cc: Kim F. Piner  
Chief/Senior Assistant Attorney General

Attachment